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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,490	10/21/2003	David Friedl	202 P 019	5073

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EXAMINER

ALEXANDER, REGINALD

ART UNIT PAPER NUMBER

1761

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/690,490

Applicant(s)

FRIEDL ET AL.

Examiner

Reginald L. Alexander

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-59 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/04; 12/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-59 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/119,639. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are an obvious variation of the claims presented in the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 47 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for the recited burner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6 and 8-14 are rejected under 35 U.S.C. 102(a) as being anticipated by Schlosser et al.

There is disclosed in Schlosser et al. a cooking apparatus, comprising: a housing 12; a gas burner 14, the burner having a first end (upper end) and a second end (lower end or bottom surface), the second end positioned closer to a bottom surface of the housing than the first end, the burner having a drain hole proximate the second end; and an igniter 64 associated with the burner. In regards to the angled configuration of the burner, the bottom surface 28 is angled in a frustoconical shape.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-22, 32, 46, 57 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Tommansini.

There is disclosed in Tommansini a cooking apparatus, comprising: a housing defining an interior 2; a heating element (not shown, inherently taught); a cleaning system 3; 6, 7, 8 having a first outlet 7 in the interior, a delivery conduit 6, a reservoir 8, a central shaft (vertical portion of the conduit 6) connected to the outlet and a first pump 9 connected to the delivery conduit and reservoir; a rinsing system 15, 16, 17, 18 having a second outlet in the interior; and a control means associated with the cleaning and rinsing system.

Claims 48-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Riccio.

There is disclosed in Riccio a cooking apparatus, comprising: a housing 20 defining an interior, housing having a ceiling defined by horizontal sections (crossbeams); a blackbody radiator (or equivalent) 120 suspended from the ceiling; a heating element 52, 54 operably coupled to the radiator; and a plurality of fasteners 122 connecting the radiator to the ceiling.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser et al. in view of Tommansini.

Schlosser, as discussed above, discloses all of the claimed subject matter except a cleaning system.

Tommansini, as discussed above, discloses that it is known in the art to have a cleaning system for the interior of a cooking apparatus.

It would have been obvious to one skilled in the art to provide the apparatus of Schlosser with the cleaning system disclosed in Tommansini, for the purpose of automatic cleaning of the interior as opposed to manual cleaning by a user.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser et al.

Schlosser discloses the claimed invention except for the dimensions of the heating element. It would have been an obvious matter of design choice to have a second end  $\frac{1}{4}$  inch closer to a bottom of a housing than a first end, since applicant has not disclosed that such an arrangement solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with that disclosed in the prior art.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser et al. in view of Riccio and Tommansini

Schlosser, as discussed above, discloses a cooking apparatus having a housing and burner with a drain hole. Riccio, as discussed above, discloses a blackbody radiator. And, Tommansini, as discussed above, discloses a cleaning system for a cooking apparatus.

It would have been obvious to one skilled in the art to provide the apparatus of Schlosser with the blackbody radiator of Riccio and the cleaning system disclosed in

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Tommansini, in order to radiate and direct heat within the interior and provide for an automatic cleaning of the interior.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tommansini in view of Riccio.

It would have been obvious to one skilled in the art to provide the apparatus of Tommansini with the blackbody radiator taught in Riccio, in order to radiate and direct heat within the entire cooking apparatus interior.

Claims 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tommansini in view of Schlosser et al.

It would have been obvious to one skilled in the art to substitute the heating means of Tommansini with the burner arrangement taught in Schlosser, in order to provide an alternative means for heating the cooking apparatus interior.

Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tommansini in view of Schoeppel.

Schoeppel discloses that it is known to use a filter in conjunction with a cleaning and rinsing system.

It would have been obvious to one skilled in the art to provide the apparatus of Tommansini with the filter disclosed in Schoeppel, in order to filter the cleaning fluid.

***Allowable Subject Matter***

Claims 22-26 and 33-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

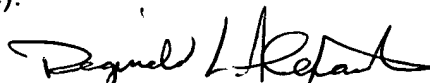
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Kohlstrung, Hyde, Leighton, Skender, Kuopus, Luedke et al., Farnsworth et al. and Kuechler are cited for their disclosure of the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla  
17 May 2006

  
Reginald L. Alexander  
Primary Examiner  
Art Unit 1761